

**BEFORE THE  
CASE REVIEW PANEL**

In The Matter of Jeremy, Jason,	)	
and Justin Dibbern,	)	
Petitioners	)	
and	)	<b>CAUSE NO. 001129-6</b>
The Indiana High School Athletic Assoc.,	)	
Respondent	)	
	)	
Review Conducted Pursuant to	)	
I.C. 20-5-63 <i>et seq.</i>	)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

**Procedural History<sup>1</sup>**

Petitioners are triplets who attended Arsenal Technical High School (“Tech”), Indianapolis Public Schools, for their freshman and sophomore years. They are presently seventeen years old (date of birth: November 8, 1983). They participate in wrestling, an interscholastic sport sanctioned by the Respondent. On August 17, 2000, Petitioners enrolled as juniors in Perry Meridian High School, Metropolitan School District of Perry Township (“Perry”). Petitioners represent that they had moved from Tech to Perry for academic reasons and sought full eligibility under the by-laws of the Respondent.<sup>2</sup> On October 10, 2000, Perry submitted on behalf of Petitioners the IHSAA Athletic

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<sup>1</sup>Gerald McLeish, member of the Case Review Panel, has recused himself from participating in the instant matter. He is principal of Arsenal Technical High School, the school from which Petitioners have transferred.

<sup>2</sup>The IHSAA has promulgated a series of by-laws as a part of its sanctioning procedures for interscholastic athletic competition. Some by-laws apply to specific genders (“B” for Boys; “G” for Girls), but most of the by-laws are “common” to all potential athletes and, hence, begin with “C.” Rule 19, which governs transfers and eligibility, is common to all athletes. **Rule C-19-5** addresses transfer eligibility where the student’s parent or guardian does change residence, while **Rule C-19-6** addresses transfer eligibility where there has been no corresponding change of residence. “Limited eligibility” is defined under **Rule 19** as meaning a student may participate in all interschool athletics, except on varsity athletic teams, for a period of 365 days from the date of last participation at the previous school. The “limited eligibility” rule can be applied to situations where there has been no corresponding change

Transfer Report. The Assistant Commissioner who reviewed the Transfer Report declined to provide full eligibility for Petitioners and, on October 31, 2000, accorded them “limited eligibility” under Rule C-19-6.2 (see footnote 2, *supra*). Petitioners appealed to the IHSAA Review Committee, which conducted a hearing on November 15, 2000, and issued a decision on November 21, 2000. It is the final decision of the IHSAA’s Review Committee that is appealed to the Case Review Panel under I.C. 20-5-63-7(b).

Petitioners wrestled on the varsity team at Tech both their freshman and sophomore years. Petitioners also wrestled for various club wrestling programs. Although Petitioners earned mostly A’s, B’s, and C’s at Tech, they did not pass the Graduation Qualifying Examination (GQE) their sophomore year.<sup>3</sup> Although Tech provides a tutorial program, the Petitioners did not participate, although they did attend summer school. Petitioners assert that a reason for their remaining at Tech for their first two years of high school was to allow their older brother to graduate from Tech, which he did in the class of 2000.

The parent for Petitioners had discussed, prior to the transfer, the possibility of the Petitioners wrestling for Perry or the MSD of Warren Township (“Warren”). Tech’s athletic director stated the parent also spoke with a local parochial school, but the parent denies such contact was made. The Petitioners were involved at one time with club wrestling at Perry, Warren, and the parochial school. The parent did state to the Tech athletic director that he was concerned the Petitioners had not advanced adequately under Tech’s wrestling program, and he believed the Perry program would better meet the athletic needs of Petitioners. The Warren coach informed the Tech coach that the parent said the Petitioners would move to Warren if the Warren coach would commit to placing Petitioners on the varsity team. The parent neither confirmed nor denied such a statement was made to the Warren coach, but suggests that any such comment, if made, is being taken out of context.

Although Petitioners maintain the transfer to Perry was for academic reasons and based on Perry’s academic reputation, there were no discussions previous to the transfer that centered on academic areas. All reported discussions involved wrestling. Petitioners’ parents also stated to the Tech athletic director that they wished to move because their residence in the Tech district was near a house where drug activity was suspected and they feared for their safety.

Petitioners lived for eight years in a residence within the Tech boundaries prior to the transfer at the

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of residence. See **Rule C-19-6.2**. All references herein are to the IHSAA’s By-Laws for the 2000-2001 school year.

<sup>3</sup>The GQE is a part of the Indiana Statewide Testing for Educational Progress (ISTEP+) administered at the 10<sup>th</sup> grade level. Prospective graduates must satisfy the mathematics and English/language arts portions of the GQE in order to be eligible to receive a high school diploma. Under standard administrations, Petitioners have four more opportunities, beginning this past fall, to pass both parts of the GQE. See I.C. 20-10.1-16-13.

beginning of the 2000-2001 school year. The residence was placed for sale in July of 2000 but did not sell. Petitioners remained at the residence until September 19, 2000, when the family rented an apartment within the Perry district. Petitioners and their parents moved to the apartment while Petitioners' older sister and her two children remained at the original residence. The older sister entered into a lease agreement with Petitioners' parents for one-half of the residence, while Petitioners' older brother, who married shortly after graduation, entered into a lease for the other half of the residence and moved in. The house remains for sale.

Although the Tech wrestling program reportedly would have been a competitive one, the Perry wrestling program finished in the top eight (8) teams in the team competition in the state tournament last year. Tech asserts the transfer is primarily for athletic reasons and objects to the granting of general eligibility to Petitioners. Perry represents that Petitioners meet the requirements of Rule C-19-5 (Transfer Eligibility with Change of Residence by Parents), which reads: "A student who transfers with a corresponding change of residence to a new district or territory by the student's custodial parent(s)/guardian(s) may be declared immediately eligible, provided the change of residence was bona fide."

Based on the foregoing, the IHSAA Review Committee concluded Petitioners have not had a "bona fide change of residence." Respondent has developed certain criteria for defining this phrase for application under Rule 19 (Eligibility and Transfer). In order for a change of residence to "bona fide," the "original residence must be abandoned as a residence; that is, sold, rented, or disposed of, or in the process of being disposed of as a residence and must not be used as a residence by **any** member of the student's immediate family" (emphasis original). In addition, "the student's entire family must make the change [of residence] and take with them the household goods and furniture appropriate to the circumstances..." In this circumstance, the parents and the Petitioners moved to the apartment in Perry but the daughter and a son, albeit with their own families, remained in the residence. The parents and the Petitioners did not remove all of the furniture from the residence but left behind those items that would be used by the daughter and her children.<sup>4</sup>

The Review Committee also noted that the lease of the apartment occurred after enrollment in Perry and not prior to. Although there are no findings that the older siblings are emancipated, the Review Committee treats them as members of the immediate family for application of its "bona fide change of residence" criteria. Because the house has not been abandoned nor sold or otherwise disposed of to a third party, there has been no "bona fide change of residence."

Although the Review Committee concluded the move was not "primarily" for athletic reasons, it still

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<sup>4</sup>The Review Committee's written decision places some importance on the dimensions of the residence versus the apartment, such as square footage. This does not appear to be relevant. Accordingly, this part of the Review Committee's decision will not be addressed.

found “that there was a clear athletic motivation in the move.” (Written Opinion, p. 12) Based upon inquiries made by the parent regarding wrestling opportunities, the Review Committee also concluded that “[t]he circumstance under which the move and transfer occurred shows a fraudulent and deceitful intent.” *Id.* However, the Review Committee did not find there was any “undue influence” exercised that resulted in the transfers (Rule 20).

Accordingly, the Review Committee upheld the original determination that the Petitioners will have but “limited eligibility” at Perry under Rule C-19-6.2, with general eligibility restored after the passage of 365 days from their last interscholastic athletic participation at Tech, provided that all other eligibility criteria are satisfied. The final ruling also contained the following: “However, if the Dibbernans can provide to the Commissioner proof that they have completed a bona fide sale of their home...to a disinterested third-party purchaser, the Review Committee will direct that the [Petitioners] be granted immediate full eligibility” at Perry.

### **APPEAL TO THE CASE REVIEW PANEL**

The Petitioners, on November 29, 2000, appealed to the Case Review Panel (CRP) the adverse decision of the IHSAA Review Committee. All parties were notified of their hearing rights. Petitioners requested that the hearing be open to the public. A review hearing date was established for December 7, 2000, beginning at 10:30 a.m. local time. Notice of the review hearing was posted, as required of public agencies by Indiana’s Open Door Law, I.C. 5-14-1.5 *et seq.* CRP members were provided with copies of the record as established before the IHSAA. Petitioners appeared in person and by their parents; Respondent appeared by counsel and its Commissioner.

The CRP is a nine-member adjudicatory body appointed by the Indiana State Superintendent of Public Instruction. The State Superintendent or her designee serves as the chair. The CRP is a public entity and not a private one. Its function is to review final student-eligibility decisions of the IHSAA, when a student, parent or guardian so requests. Its decisions are to be student-specific, applying only to the case before the CRP. The CRP’s decision does not affect any By-Law of the IHSAA.

### **FINDINGS OF FACT**

1. Petitioners are seventeen-year-old triplets (d/o/b November 8, 1983) who attended Tech during the 1998-1999 and 1999-2000 school years. During this time, Petitioners participated on the varsity wrestling team. Wrestling is an interscholastic sport sanctioned by the Respondent.
2. Besides participation in interscholastic wrestling sanctioned by Respondent, Petitioners have

also been involved in wrestling clubs affiliated with other schools.<sup>5</sup> Petitioners often participated in practices with these clubs four (4) nights a week as well as participating in Saturday tournaments. Club wrestling is not conducted during the high school wrestling season.

3. Petitioners earned mostly A's, B's, and C's but failed to pass the English/language portion of the GQE although all three did pass the mathematics portion. Petitioners were enrolled in after-school remedial English classes geared toward addressing the academic standards measured by the GQE, while two of the Petitioners also participated in remedial classes during the typical school day. Petitioners had also been enrolled in a summer program after their freshman year that was essentially a GQE-preparation course. Petitioners also attended a summer remediation following their sophomore year, although their transcripts do not indicate that they did so.
4. Following the completion of the 2000-2001 school year, Petitioners' residence was advertised for sale. However, the residence did not sell before the beginning of the 2001-2002 school year. The residence had not sold at the time of the CRP Review Hearing in this matter.
5. Petitioners enrolled in Perry on August 17, 2000, and withdrew officially from Tech on August 24, 2000. Petitioners represent that the primary reasons for transferring from Tech to Perry were for academic and social reasons, although Petitioners acknowledge that the wrestling program at Perry was also a consideration, but only as a part of the overall decision to transfer to Perry.
6. Although Petitioners enrolled at Perry on August 17, 2000, the family did not lease an apartment in the Perry district until September 19, 2000, apparently after being advised by Perry that unless they lived in the Perry district, Petitioners would have to pay tuition. The lease, which was only for three and one-half months, indicated that only the parents would be living in the apartment. Testimony indicates that the leasing agent was aware the Petitioners would be living in the apartment as well. Testimony also indicated that the parents believed the residence in Tech would sell quickly, and still expected it to sell when school began in August. However, the residence did not sell and has not yet been sold. The lease is of short duration due to the expectation the house will sell and the proceeds applied to the purchase of a residence in Perry. The lease is month-to-month after the expiration of the three and one-half months' term.
7. Petitioners have an older sister who has two children of her own as well as an older brother who is married with a newborn child. The older sister and brother entered into lease

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<sup>5</sup>Club wrestling differs from the rules for high school wrestling. Club wrestling involves "free style" and "Greco-Roman" wrestling, which are Olympic events.

agreements with the parents and presently reside at the residence located in Tech. The lease agreements require the older children to vacate the premises within thirty (30) days of notification to do so. The older sister resided in the residence before Petitioners' move and paid rent to the parents. The older brother had moved out but re-entered the residence, along with his wife and newborn child, under the aforementioned lease agreement.

8. When the Petitioners and their parents moved from the Tech residence to the Perry apartment, they took with them their personal belongings except for those items that were removed to the dump. Items remaining at the Tech residence were the property of the older sister.
9. The parents expressed concern about academics for Petitioners at Tech. Based on Petitioners' grades during their freshman year, the guidance counselor encouraged the Petitioners to pursue a college preparatory curriculum. However, two of the Petitioners elected to include vocational education courses in their sophomore schedule. This does not preclude Petitioners from post-secondary education but may limit their opportunities.
10. Through the various club wrestling programs Petitioners have participated in, the father met many other wrestling coaches who reportedly indicated to the father that Petitioners would be welcomed additions to their respective teams. Upon cross examination, the father could not provide the name of any coach who made such a statement. The father likewise was less than precise in identifying what Marion County schools he reviewed prior to deciding to transfer Petitioners to Perry. Notwithstanding, the wrestling coach from Warren appeared and testified that the father did state sometime around March of 2000 that the family was considering a move from Tech and that Warren was a consideration. The Warren coach indicated that should Petitioners transfer to Warren, they would have to work to make the varsity team as any other student-athlete would. There was testimony that Warren and Perry have highly ranked wrestling teams, while Tech is presently 1-7.<sup>6</sup>
11. Respondent's by-laws define what it means by "bona fide change of residence" but do not define "immediate family." Respondent considers the older sister, who lived in the Tech residence at the time of the move to Perry, to be a member of the "immediate family." Accordingly, the Tech residence has not been "abandoned" for application of Respondent's rules. Respondent testified as to similar experiences in other cases where such moves were

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<sup>6</sup>This information is included because it does serve as a basis for the concern raised by the Respondent that Petitioners may have been "shopping" for a wrestling program and that the transfer was motivated by athletic concerns. However, the Respondent had previously acknowledged that the transfer was not "primarily" for athletic reasons. There is nothing in the IHSAA's by-laws that prohibits athletics from being a part of the consideration, especially where there is credible testimony that the primary concerns were unrelated to athletics.

little more than shams and, once the transfer was approved for full eligibility, the family moved back into the residence it had purportedly “abandoned.” Respondent also asserts that the failure to secure an apartment in Perry until over one month into the school year, coupled with the short-term of the lease, is a concern that the Petitioners might not remain in Perry but move back to the Tech residence should Petitioners be accorded full eligibility.<sup>7</sup>

### CONCLUSIONS OF LAW

1. Although the IHSAA is a voluntary, not-for-profit corporation and is not a public entity, its decisions with respect to student eligibility to participate in interscholastic athletic competition is “state action” and for this purpose makes the IHSAA analogous to a quasi-governmental entity. IHSAA v. Carlberg, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998). The Case Review Panel has been created by the Indiana General Assembly to review final student eligibility decisions with respect to interscholastic athletic competition. P.L. 15-2000, adding I.C. 20-5-63 to the Indiana Code. The Case Review Panel has jurisdiction when a parent or guardian invokes the review function of the Case Review Panel. In the instant matter, the IHSAA has rendered a final determination of student-eligibility adverse to the Petitioners. The parent has timely sought review. The Case Review Panel has jurisdiction to review and determine this matter.
2. The core issue in this matter is whether the Petitioners satisfied **Rule C-19-5**, which reads: “A student who transfers with a corresponding change of residence to a new district or territory by the student’s custodial parent(s)/guardian(s) may be declared immediately eligible, provided the change of resident was bona fide.” The Respondent defines “**bona fide change of resident**” for application to Rule 19 provisions as depending upon certain facts, to wit:
  - a. The original residence must be abandoned as a residence; that is, sold, rented or disposed of, or in the process of being disposed of as a residence and must not be used as a residence by **any** member of the student’s immediate family; and
  - b. The student’s entire immediate family must make the change and take with them the household goods and furniture appropriate to the circumstances. For eligibility

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<sup>7</sup>Respondent’s position is well taken in this regard. However, by statute, the Case Review Panel must consider each student-eligibility dispute individually. The actions of others, while instructive in the understanding of the Respondent’s by-laws, are not controlling. As will be noted *infra*, the Petitioners’ explanations as to why they delayed for over a month in securing a residence in Perry, as well as the circumstances surround the family relationship, are considered credible explanations. It should also be noted that such credibility determinations apply to the case before the Case Review Panel and do not control any future disputes involving essentially the same issues.

purposes, a single family unit may not maintain two or more residences.

(Emphasis is original.) There is no dispute that Petitioners' parents have been attempting to sell the residence located in the Tech district, but have been unsuccessful. The family is not a family of any exceptional means that would support the maintenance or purchase of two separate residences. The reasons proffered for the delays occasioned in securing a residence in Perry, coupled with statements and actions that occurred prior to the beginning of the current school year, render credible the family's explanations for their actions. Evidence and testimony indicate that Petitioners and their parents have "abandoned" the Tech residence and established a residence in Perry. Evidence and testimony indicate that Petitioners and their parents have taken with them the household goods and furniture "appropriate to the circumstances," and that any personal property left behind was the property of the older sister.

3. The Respondent's by-laws do not define what is meant by "immediate family." In the absence of same, this concept will need to be defined on a case-by-case basis. In this case, the Petitioners—who are dependent upon their parents and are unemancipated—moved with their parents to Perry. The older sister has two children of her own, while the older brother is married with a newborn child. Both have families of their own. There is no evidence or testimony to indicate that the older sister and the older brother are not emancipated. Because the older sister and the older brother are considered emancipated, they are not considered members of the "immediate family" for the purposes of defining this concept within Respondent's rules. It is concluded that the "immediate family," to include Petitioners and their parents, have achieved a "bona fide change of residence."

### ORDERS

1. Petitioners have satisfied the requirements of **Rule C-19-5** in that they have transferred to the MSD of Perry Township from the Indianapolis Public Schools with their parents, and that such change of residence is a bona fide change of residence.
2. Petitioners have immediate full eligibility to participate in interscholastic sports sanctioned by Respondent.
3. This decision should not be construed as affecting the sanctioning functions of the Respondent should Petitioners transfer to another member school.
4. The above decision represents a 6-1 vote of the Case Review Panel members present.

DATE: December 8, 2000

/s/ John L. Earnest, Chair



## Case Review Panel

### APPEAL RIGHT

Any party aggrieved by the decision of the Case Review Panel has thirty (30) calendar days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. 4-21.5-5-5.